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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.1878/2006

CORAM : Hon'ble Shri S.R.NAYAK, Chief Justice &
Hon'ble Shri Dilip Raosaheb Deshmukh, Judge

PETITIONER		Nagar Vikash Parishad , Akaltara, through its president Mohan Lawanya aged about 64 years s/o Prabhu Dayal Lawanya R/o Mohan Niwas Thana Road, Akaltara, Distt-janjgir Champa
		VERSUS
RESPONDENTS	1.	State of Chhattisgarh, through the Secretary, P.W.D. (Bridge Corporation) D.K.S. Bhawan, Raipur
	2.	Engineer-in-Chief, P.W.D. (Bridge Corporation) D.K.S. Bhawan, Raipur
	3.	Executive Engineer, P.W.D. (Bridge Corporation), Bilaspur Division, Bilaspur, Chhattisgarh
	4.	General Manager, South-East Central Railway, Bilaspur, district-Bilaspur
	5.	Director, Town and Country Planning, D.K.S. Bhawan, Raipur.

Shri Vishnu Koshta, Counsel for the petitioner.
Shri Prashant Mishra, Addl. Advocate General with Shri Utkarsh Verma, Dy. Government Advocate for the State.

ORAL ORDER
(Passed on 26-04-2006)

The following oral order of the Court was passed by **S.R. Nayak, C.J.**

The action of the respondents proposing to construct an over-bridge at the Railway crossing in Baloda Road in Akaltara town has been assailed in this Writ Petition claiming it to be a Public Interest Litigation, by Nagar Vikash Parishad, Akaltara represented by its President on several grounds such as, (i) that the over-bridge cannot be constructed without permission of the Pollution Control Board; (ii)

that the construction of over-bridge result in cutting of about 100 trees; (iii) that the proposed site for construction of over-bridge could not serve the purpose for which it is constructed and it could be conveniently constructed at a different point and (iv) that even the Railway Board in his meeting held on 03-05-2005 has agreed to consider the proposal to change the site for construction of over- bridge if it receives a request from the State Government in that regard.

2. Having heard learned counsel for the parties, we do not find any substantive ground to step in under Article-226 of the Constitution of India and to entertain this Public Interest Litigation. Although above grounds are taken in support of this Writ Petition at page-6 of the Writ Petition, learned counsel for the petitioner did not press first contention obviously, because, such obligation could not be traced with reference to any public law. In support of the second contention, our attention was drawn to Rule 1(b) of the Rules framed by the State Government in exercise of the powers conferred by sub- section (1) and clause (lxi) of sub-section (2) of Section 258 read with Section 24 of Chhattisgarh Land Revenue Code, 1959 and it was contended that since that Rule applies, in the facts and circumstances of this case, the respondents cannot cut the 100 trees existing therein within the prohibited distance and in that view of the matter, construction of over-bridge without permission of the Government would be illegal. The contention is misconceived. Rule 1(b) has no application to the facts and circumstances of this case. Rule 1(b) provides that no tree shall be cut, girdled or otherwise damaged among other situations covered therein if such tree is situated within 15 meters of the centre of a road or a cart-track and within 6 meters of footpath. That only means that if there exists a road or cart-track or footpath, as the case may be, the tree situated within the prescribed distance from the centre of road or cart-track or foot-path, as the case may

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be, shall not be cut or removed. That provision has no application where the respondents are to construct over-bridge.

3. The feasibility and suitability of constructing an over-bridge at a particular point is the matter to be decided by the respondent-authorities who are supposed to be experts in the field taking into account all relevant factors and circumstances to subserve the public interest. They cannot be dictated by a legal local body like the petitioner who could not be regarded as an expert in the field to its liking. Be that as it may, it is neither pleaded nor shown that the respondent- authorities have decided to construct over-bridge at the Railway crossing on Baloda Road with any ulterior motive and/or for any extraneous consideration. Unless the proposed action is shown to be *mala fide*, it is not the legitimate domain of the Court to step in under Article-226 of the Constitution of India to correct the decision taken by the respondents.

4. There is no need to deal with the last contention. If the Railway Board is willing to consider the request of the petitioner to change the point at which over-bridge has to be constructed if it receives a proposal in that regard from the State Government, the petitioner can persuade the State Government to do so accordingly. Nobody can question that liberty of the petitioner.

5. Cumulatively, we do not find any ground whatsoever to entertain this Writ Petition and it is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

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